

UNITED STATES COURT OF APPEALS June 23, 2009

FOR THE TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

In re: ARTHUR J. CAENEN, JR.,

Movant.

No. 09-3142
(D.C. No. 5:08-CV-3118-SAC)

ORDER

Before **KELLY, LUCERO**, and **HARTZ**, Circuit Judges.

Movant Arthur J. Caenen, a Kansas state prisoner appearing pro se, has filed his third motion seeking authorization to file a second or successive 28 U.S.C. § 2254 petition. We deny the motion.

Mr. Caenen was convicted of first degree murder for intentionally running over his victim with his car. His first § 2254 petition was dismissed as time-barred; and we have twice denied him authorization to file a second or successive § 2254 petition. *See Caenen v. Rohling*, No. 06-3359, slip op. at 1-4 (10th Cir. Nov. 8, 2006) (reciting Mr. Caenen's post-conviction history of filing, and seeking to file, § 2254 petitions, and denying authorization) (unpublished order). Both of Mr. Caenen's prior motions for authorization were denied because he sought to present the same claims that he previously asserted in his

first § 2254 petition, namely, that the victim's death was the result of an automobile accident for which he was not at fault. *See id.*

In his current motion for authorization, Mr. Caenen again seeks to claim that he was not at fault because he was driving while medically and mentally impaired. His proposed claims are not based on any new evidence or new law and, thus, do not satisfy the requirements to file a second or successive § 2254 petition. *See* 28 U.S.C. § 2244(b)(2). Moreover, Mr. Caenen asserted these same claims in his first habeas petition and in both motions for authorization. Because Mr. Caenen previously raised his proposed claims in his prior § 2254 petition, we must deny his motion for authorization to file a successive petition. *See* 28 U.S.C. § 2244(b)(1) (“A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.”).

Accordingly, we DENY Mr. Caenen authorization to file a second or successive habeas petition. The matter is DISMISSED. This denial of authorization is not appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari. *See* 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish.

ELISABETH A. SHUMAKER, Clerk